

Registration Form and Intellectual Property Rights Agreement

Please return via email (as a PDF),
FAX (preferred) or mail to:

Consortium Administrator

Email: admin@csep.org
FAX: +1.503.766.5695
Address: 515 NW Saltzman Rd #776
Portland, Oregon 97229-6098

A. Participant:

Legal Name: _____
(“Participant” *company name*)

B. Participant’s contact information (for the purposes of licensing information):

Contact name / title: _____

Department: _____

Address: _____

Telephone: _____

Email: _____

C. Definitions.

For the purposes of this Registration Form and Intellectual Property Rights Agreement (the “Agreement”):

"Affiliate" shall mean an entity that directly, or indirectly through one or more intermediaries, controls Participant, is controlled by Participant, or is under common control with Participant. For the purposes of this definition, the term "control" and its derivatives, with respect to for-profit entities, means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the capital stock (or other ownership interest, if not a corporation) of an entity ordinarily having voting rights. "Control" and its derivatives, with respect to nonprofit entities, means the power to elect or appoint more than fifty percent (50%) of the Board of Directors of an entity.

“Confidential Information” shall mean any and all non-public technical and non-technical information including, without limitation, all Consortium work product and work in progress that the Consortium has not expressly released for public access and distribution, including specifically all non-final test specifications, test plans and test scripts, and all other Consortium Materials; and all other non-public technical and non-technical information of the Consortium related to its current, future and proposed activities, products and services, including, as applicable, unpublished patents, unpublished original works of authorship, trade secrets and other proprietary information such as and without limitation, techniques, sketches, drawings, models, inventions,

know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to the Consortium in the course of the Consortium's operations and condition such disclosure upon the Consortium's obligation to maintain the confidentiality of such information.

"Consortium" shall mean the Consortium for Smart Energy Profile 2 Interoperability, a nonprofit association, and its successor corporation if the Consortium becomes an incorporated entity.

"Consortium Materials" shall mean test specifications, test procedures, test tools and other supporting documents provided that: (a) such documents shall be Consortium Materials solely to the extent that such documents describe ways to test the conformance, compliance, and interoperability of products that implement a Specification for which the Consortium is developing a test program; and (b) that such documents shall not become Consortium Materials until they are released after a thirty (30) day review period and following approval of each document by the Consortium Board of Directors, including any updates that are released by the Consortium following approval by the Consortium.

"Essential Patent Claim(s)" shall mean any Patent Claim that is owned or controlled by Participant now or in the future and that is necessarily infringed by implementing the Consortium Materials. A Patent Claim is "necessarily infringed" only when there is no commercially practicable way of implementing the relevant and required or optional portion of a test specification, test plan or test script without infringing the relevant patent claim.

"Governing Documents" shall mean the Consortium [Memorandum of Understanding](#) and this Registration Form and Intellectual Property Rights Agreement. In the future, the Consortium may incorporate and in that event, Governing Documents will consist of the Articles of Incorporation and Bylaws of the Consortium as in effect from time to time, together with such policies and procedures as the Consortium board of directors may from time to time adopt and make applicable to participation in the Consortium.

"Member(s)" shall mean the Sponsor Members, Promoter Members and General Members of the Consortium.

"Participant Materials" shall mean any materials that Participant provides to the Consortium for its use, including for inclusion as part of the Consortium Materials.

"Patent Claims" shall mean one or more claims in one or more issued patents or pending patent applications.

"Specification" shall mean the Smart Energy Profile Version 2 (SEP 2) specification and associated specifications, technologies and derivatives.

“WG(s)” shall mean the Technical Committee, any subcommittee, and any other working group or task group formed by or under the authority of the Consortium, regardless of how that group is named or designated.

D. Registration to Participate in One or More Working Groups.

Participant hereby acknowledges that it wishes to register as a Participant in the Consortium in order for its representatives to participate in the WG(s) for the purposes of creating Consortium Materials. Participant submits this Agreement as a prerequisite for its participation and the participation of its representatives in the WG(s).

Participant hereby agrees to comply with the Governing Documents of the Consortium and maintain membership in good standing of at least one industry trade association that is a Sponsor member or a Promoter member of the Consortium and hereby acknowledges that failure to comply may result, among other things, in suspension of participation or expulsion from WG(s) and the Consortium or termination of this Agreement, as determined by the Consortium. Participant shall ensure that its contractual relationship with each of its representatives participating in Consortium activities on its behalf includes all undertakings by the representative that are necessary in order to enable Participant to faithfully comply with all of its obligations under this Agreement.

E. Participant’s Covenant to License Essential Patent Claims.

- (1) Participant hereby agrees to grant, to all persons and entities, regardless of whether such person or entity is a Member of the Consortium, on a worldwide basis, a nonexclusive license to all Essential Patent Claims for the purpose of implementing the Consortium Materials. Additionally, Participant agrees that such license will be on fair, reasonable and nondiscriminatory terms and conditions.
- (2) Nothing in this Agreement shall be interpreted as giving rise to a duty on the part of Participant to conduct a patent search.
- (3) Participant agrees that it will not sell or otherwise transfer any rights in any Essential Patent Claim that it holds, controls, or has the ability to license with the intent of circumventing or negating any of the representations and commitments made in this Agreement.
- (4) Participant further expressly agrees that this covenant to license shall encumber all Essential Patent Claims, and shall be binding upon all successors and assigns. This encumbrance also applies to any sale, assignment or transfer of Essential Patent Claims to an Affiliate.

F. Participant’s Covenant to License Copyrights.

- (1) Participant will not contribute any Participant Materials that are subject to copyright unless it either owns the copyright or has a license to such

copyright that is sufficiently broad to grant the copyright licenses set forth in this Agreement. To the extent that any Participant Materials contributed by Participant become incorporated into the Consortium Materials, Participant hereby agrees to grant to the Consortium, an irrevocable, free of charge and royalty free, perpetual, worldwide, transferable, nonexclusive license in and to the copyright in such Participant Materials. Additionally, and without limiting the licensing obligations herein, Participant agrees that Consortium shall own any and all copyrights in the collective work(s) constituting any draft and/or approved Consortium Materials. Participant shall continue to have ownership rights in the Participant Materials, subject to the license rights and Consortium's ownership of copyrights in the collective work(s) constituting draft and approved Consortium Materials granted above.

- (2) As part of the license granted above, Consortium may incorporate the Consortium Materials in electronic and print publications (and in publications in any media now known or hereafter devised in all languages) and reproduce, distribute, display and perform the Consortium Materials as part of the Specification or other material, and to make derivative works of the Participant Materials licensed hereunder.
- (3) Participant agrees that it will not sell or otherwise transfer any rights in any copyright that it holds, controls, or has the ability to license with the intent of circumventing or negating any of the representations and commitments made in this Agreement.
- (4) Participant further expressly agrees that this license shall encumber all copyrights, and shall be binding upon all successors and assigns. This encumbrance also applies to any sale, assignment or transfer of copyrights to an Affiliate.
- (5) Participant further expressly agrees that Participant shall not (a) repurpose or reuse any Consortium document, (b) remove the copyright notice contained thereon, (c) vary or remove its title, (d) remove other legends, and disclaimers included by the Consortium on the document, or (e) use all or any part of it as part of a specification, test plan, test script or standard not emanating from the Consortium. Participant shall not publish nor disclose the test plan, test script or specification to any third party until the specification is published by the Consortium after express authorization by the Consortium through posting on the Consortium's Web site on a Web page that the Consortium makes available for public access, viewing and use.

G. Application to Affiliates

An Affiliate of Participant shall be excluded from participation in the Consortium and not have the right to exercise the rights granted to Participant hereunder ("Excluded Affiliate") until the Affiliate also executes this Registration Form and Intellectual Property Rights Agreement and submits it to the Consortium.

Participant agrees that it will not permit an Excluded Affiliate, or employees or consultants of any Excluded Affiliate to participate in Consortium activities or make contributions to the Consortium and that Participant's contributions to the Consortium will not include any Essential Patent Claims or Copyrights that are owned or controlled by an Excluded Affiliate.

H. Non-Disclosure Obligations.

- (1) Participant agrees that Participant will not use, disseminate, or in any way disclose any Confidential Information to any person, firm or business, other than to other Participants in any WG without the express prior written authorization of the Consortium. Participant agrees that Participant shall treat all Confidential Information of Consortium with the same degree of care as Participant accords to Participant's own Confidential Information of comparable sensitivity, but in no event less than reasonable care.
- (2) Participant's obligations shall not apply to any portion of Confidential Information that prior to any disclosure was: (a) already generally known to the public other than by the Participant's breach of a duty; (b) rightfully in Participant's possession free of any obligation of confidence; (c) developed by employees or agents of Participant independently of and without reference to any information communicated to Participant by the Consortium or other Participants; or (d) released by approval of the Consortium. A disclosure of any portion of Confidential Information, either (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Participant shall provide prompt prior written notice thereof to Consortium to enable Consortium to seek a protective order or otherwise prevent such disclosure.
- (3) All restrictions on disclosures of Confidential Information shall expire three (3) years after the termination of this Agreement, provided, however, that if the Confidential Information is a trade secret, the confidentiality obligation under this Agreement shall continue with respect to the trade secret until such time that the trade secret ceases to be "Confidential Information" under this Agreement.

I. No Export.

Participant will not export, directly or indirectly, any technical data acquired from Consortium pursuant to this Agreement or any product utilizing any such data to any country (or to any national thereof) for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

J. No Representations or Warranties by Consortium.

Participant agrees that all Consortium Materials are provided "AS IS" and without any warranty, express, implied or otherwise, regarding such Consortium Materials' accuracy, performance or fitness for a particular purpose, and without regard to whether such Consortium Materials infringe the intellectual property rights of any third parties. To the maximum extent permitted by law, the Consortium expressly disclaims all warranties of any kind. The Consortium has not conducted a review of the Consortium Materials and Essential Patent Claims and disclaims any obligations to do so.

K. Limitation of Liability.

To the maximum extent permitted by law, in no event shall the Consortium or any of its Members be liable to Participant for direct or indirect, incidental, special or consequential damages even if Participant has been advised of the possibility thereof. To the maximum extent permitted by law, in no event shall the total liability of the Consortium or any of its Members under any legal theory exceed the total fees, dues and assessments paid by Participant during the twelve-month period immediately prior to the event giving rise to the claim.

Except for liability arising from Participant's breach of its confidentiality obligations under this Agreement, in no event shall Participant be liable to Consortium for direct or indirect, incidental, punitive, special or consequential damages arising solely out of or relating to Participant's participation in the Consortium, even if Participant has previously been advised of the possibility of such damages. Nothing in the preceding sentence shall apply to limit the liability of a Participant to an implementer of Consortium Materials for the Participant's non-compliance with the covenant to license Essential Patent Claims as provided in Sections E or F of this Agreement. Nor is this limitation of liability intended to relieve Participant of liability under any independently executed agreement with the Consortium.

L. Term and Termination.

- (1) Term. Participant acknowledges that the Consortium shall have a perpetual corporate term. This Agreement shall commence on the date accepted by the Consortium and remain in effect until the earlier of: (i) expiration of the Consortium's corporate term; (ii) such time as Participant elects to voluntarily withdraw as a Participant of the Consortium as provided in Subsection (2) below; and (iii) termination of Participant's status as a Participant as provided in Subsection (3) below.
- (2) Voluntary Withdrawal as a Participant. Upon written notice to the Consortium, Participant shall have the right to withdraw as a Participant of the Consortium. Upon such withdrawal, the terms of Subsection (4) below shall apply.
- (3) Termination of Participation. Upon the affirmative vote of not less than two-thirds (2/3) of the Board of Directors of the Consortium, the Consortium shall

have the right to terminate Participant's status as a Participant of the Consortium for cause. The term "for cause" shall mean Participant's failure to materially comply with its obligations under this Agreement. Upon such termination, the terms of Subsection (4) below shall apply.

- (4) Survival. Upon the expiration or termination of Participant's status as a Participant of the Consortium, the following terms shall survive: (A) Sections G and H; (B) Section E with respect to Essential Patent Claims of the Participant incorporated into Consortium Materials prior to the effective date of the expiration or termination of such Participant's status as a Participant and new and/or modified versions of Consortium Materials containing such Essential Patent Claims released following the expiration or termination of such Participant's status as a Participant; and (C) Section F with respect to copyrights in Participant Materials contributed by Participant and incorporated into Consortium Materials prior to the effective date of the expiration or termination of such Participant's status as a Participant and new and/or modified versions of such Consortium Materials containing such Participant Materials released following the expiration or termination of such Participant's status as a Participant. By way of example and not limitation, with respect to Subsections (4)(B) and (4)(C), if Essential Patent Claims and/or Participant Materials of a Participant are incorporated into Consortium Materials prior to the effective date of the expiration or termination such Participant's status as a Participant ("Original Essential Patent Claims/Participant Materials"), and thereafter Participant's status as a Participant of the Consortium expires or terminates, and thereafter a new version of the Consortium Materials is released by the Consortium (or new Consortium Materials are developed) which incorporate the Original Essential Patent Claims/Participant Materials, then Participant shall be obligated to license such Original Essential Patent Claims/Participant Materials with respect to the new version of or newly developed Consortium Materials in accordance with Sections E and F.

M. Signature Authority.

The person signing this Agreement represents that he or she has the authority to bind Participant to the representations and commitments provided in this Agreement, and acknowledges that users of the Consortium Materials are relying or will rely upon and may seek enforcement of the terms of this Agreement.

N. Additional Documents.

The Participant acknowledges that the Consortium may prepare and file statements under the National Cooperative Research and Production Act of 1993 ("NCRPA" or "Act"), 15 U.S.C. §§ 4301-06, as well as additional documents which may disclose the identity of Participant. Consortium will endeavor to notify Participant and will endeavor to provide an opportunity for Participant to review any statements or documents at least thirty days prior to any NCRPA filing or additional documents that may identify Participant.

O. General Terms and Conditions.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles. Participant consents and submits to the exclusive jurisdiction and venue of the California Superior Court for Santa Clara County and the United States District Court for the Northern District of California, San Jose Division, subject to the rules of the United States District Court for the Northern District of California concerning reassignment of cases within the District. This Agreement constitutes the entire agreement with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral. This Agreement may not be modified or amended except by a document signed by the party against whom enforcement of such modification or amendment is sought. If any provision of this Agreement is for any reason found to be unenforceable, the remainder of this Agreement shall continue in full force and effect. The prevailing party shall be entitled to recover from the losing party its reasonable attorneys' fees and costs incurred in any lawsuit or other action brought to enforce any right arising out of this Agreement. This Agreement may be executed via facsimile or scanned signature and such executed copy shall be treated as an original and as such shall bind the Participant to the terms and conditions hereof.

Dated: _____
_____ Participant Company

Signature: _____

Name: _____

Title: _____

Address: _____
